

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

S.G.,

Petitioner,

v.

THE SUPERIOR COURT OF TULARE
COUNTY,

Respondent;

TULARE COUNTY HEALTH AND HUMAN
SERVICES AGENCY,

Real Party in Interest.

F056925

(Super. Ct. No. JJV063209)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Charlotte A. Wittig, Commissioner.

Childs Law Group, Erin Rhames-Childs and Peter Wall, for Petitioner.

No appearance for Respondent.

Kathleen Bales-Lange, County Counsel, John A. Rozum, Chief Deputy County Counsel, and Amy-Marie Costa, Deputy County Counsel, for Real Party in Interest.

-ooOoo-

*Before Vartabedian, A.P.J., Levy, J., and Kane, J.

Petitioner seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the orders of the juvenile court denying her reunification services and setting a Welfare and Institutions Code section 366.26 hearing¹ as to her daughters B., C., and K. We will deny the petition.

STATEMENT OF THE CASE AND FACTS

In August 2008, then nine-year-old B., seven-year-old C., and three-year-old K. were taken into protective custody by the Tulare County Health and Human Services Agency (agency) after B. and C. disclosed to their maternal grandmother, Mrs. R., that petitioner's husband, their stepfather J.M. (stepfather), touched them inappropriately. Before her removal, B. lived primarily with Mrs. R. and C. and K. lived with petitioner and their stepfather.

Initial Removal

On August 1, 2008, C. asked her maternal step-grandfather, Mr. R., "Can a little girl get pregnant if someone touches her private parts?" When Mr. R. asked C. why she would ask such a question, she disclosed that her stepfather touched her. Mr. R. relayed this information to Mrs. R. when she returned later in the day. C. told Mrs. R. that her stepfather also inappropriately touched B. Mrs. R. contacted petitioner and informed her of the children's allegations. Petitioner, in turn, called the stepfather and demanded that he meet her at Mrs. R.'s home. Petitioner also contacted the police.

A police officer and agency social worker responded to Mrs. R.'s home to investigate the allegations. Petitioner was very emotional during her interview. She stated she was a victim of child sexual abuse and could not believe this was happening to her children. Nor did she believe the stepfather touched her daughters inappropriately

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

because he was the one who wanted the police contacted so he could clear his name. If he were guilty, she reasoned, he would not have cooperated with the police.

Petitioner also stated she never suspected the stepfather of sexually abusing the children and believed Mrs. R. was coaching the children so she could get full custody of them. Petitioner also offered the possibility that a friend of stepfather's may have molested her daughters. She said the friend stayed with the family for a couple of months and left in July 2008. The friend had his own bedroom but the bedrooms were dark and her daughters may have thought the person touching them was their stepfather instead of the friend.

The stepfather denied ever touching B. and C. in a sexual way. He believed Mrs. R. was coaching the girls because no one in the family supported his relationship with petitioner.

B. stated she lived primarily with Mrs. R. but visited petitioner frequently. She stated that approximately three weeks prior, she was sleeping in her bedroom at petitioner's home. Her stepfather entered her room and "was touching and touching my privates." She pointed to her vaginal area when asked what she meant by "her privates." B. said she was wearing shorts, panties, and a t-shirt and her stepfather was wearing boxers. She stated her stepfather touched her underneath her clothing with one finger and made her touch his private area. She said he told her not to tell anyone and left. The incident only occurred once. She also said the only person she disclosed this to was C. who said their stepfather did the same thing to her.

C. stated her stepfather touched her on her private areas, pointing to her vagina. She said it happened on two occasions at night while she was sleeping. Her stepfather entered her room, positioned her on her back, pulled her pajamas down and touched her vagina underneath her panties. He told her not to tell anyone. C. also said her little sister K. slept in the bed with petitioner and her stepfather.

Mrs. R. stated she was concerned because the stepfather bathed with K. and Mrs. R. did not believe it was appropriate. The police officer told petitioner it was inappropriate for the stepfather to bathe with a three-year-old child who is not his biological child.

Several days after the children were detained, Mrs. R. stated she confronted the stepfather about the allegations. He believed his conduct may have been misinterpreted by the girls. He said, on one occasion, he walked in on B. masturbating in her room. During his attempt to move her hand away from her vagina, her arm extended and accidentally touched his penis. On another occasion, he entered C.'s room at night and noticed she was not wearing underwear. So he got a pair of panties and put them on her. Mrs. R. did not believe his explanations of the incidents but petitioner told Mrs. R. that she believed the stepfather.

Mrs. R. also stated petitioner told her that the stepfather made her shave her pubic hair completely because he wanted her vagina to look like that of a little girl. She said she was surprised petitioner did not recognize that stepfather showed signs of having a sexual attraction to young girls.

The social worker contacted the children's biological father (father) to inform him the children had been detained. Father said he and petitioner had an informal custody arrangement and he paid her child support. He said he last visited the children five months prior but called them regularly. He expressed interest in taking custody of them but admitted having a criminal arrest history.

On August 5, 2008, petitioner informed the social worker the stepfather moved out of the house and she would be seeking a restraining order against him. The social worker asked her why stepfather left if petitioner did not believe he molested her daughters. Petitioner stated he left because she wanted her children back and would do anything to regain custody of them.

When the social worker contacted the foster mother to check on the children, the foster mother informed the social worker B. and C. disclosed being sexually abused without prompting. B. and C. also told the foster mother they were afraid to return to petitioner's house because they did not believe she would protect them.

Section 300 Petition (Original Petition) and Detention Hearing

On August 5, 2008, following its investigation, the agency filed an original petition alleging three counts under section 300, subdivision (d) (sexual abuse) as follows:

“d-1: [B.] has been sexually abused by [the stepfather], a member of the household. On or near [August 2008], the child disclosed that [the stepfather] sexually abused her. Such abuse included [the stepfather] fondling the child's genital area underneath the child's clothing and forcing the child [to touch the stepfather's] genital area. [Petitioner] does not believe the child was sexually abused and has allowed [the stepfather] to continue residing in the home. [Petitioner] knew or reasonably should have known the child was at risk of being sexually abused and failed to protect [her].

“d-2: [C.] has been sexually abused by [the stepfather], a member of the household. On or near [August 2008], the child disclosed that [the stepfather] sexually abused her. Such abuse included [the stepfather] fondling the child's genital area underneath the child's clothing. [Petitioner] does not believe the child was sexually abused and has allowed [the stepfather] to continue residing in the home. [Petitioner] knew or reasonably should have known the child was at risk of being sexually abused and failed to protect [her].

“d-3: [K.] is at substantial risk of being sexually abused by [the stepfather], and a member of the household. The facts stated in d-1 and d-2 are incorporated herein. Additionally, [the stepfather] bathes with the child. [Petitioner] knew or reasonably should have known that the child is at risk of being sexually abused and has failed to protect the child.”

On August 6, 2008, the juvenile court conducted the detention hearing. The court ordered the children detained from petitioner and placed them with their father. The

court also ordered no contact between the children and the stepfather and continued the detention hearing to the following week.

On August 12, 2008, the court conducted a contested detention hearing. Petitioner testified. Asked whether the stepfather disciplined the children, petitioner stated he once hit B. on the hand with a rubber sandal because she was making fun of him while he was trying to fix a bed the girls had broken. She stated there was no mark on B.'s hand and B. did not cry until petitioner entered the room. Other than that occasion, petitioner stated, the stepfather did not hit the children. Instead, he used other forms of discipline such as restricting them to their room.

Petitioner further testified she was primarily responsible for bathing the children and the stepfather never bathed them. However, it often happened that the girls would run in dirty and sweaty from playing outside as the stepfather was getting in the shower. On those occasions, petitioner asked the stepfather to take K. into the shower and wash her. She said it usually took only about three minutes. Meanwhile, petitioner remained in the bedroom, usually folding towels, and could see into the bathroom because there was no door to the bathroom. It was separated from the bedroom by an archway and the shower door was clear glass. On cross examination, she testified she was present "on each and every occasion."

Petitioner also testified as to the first time she heard about the children's allegations of sexual molestation. Mrs. R. called her at her home and told her there was a "big problem," that the girls told Mr. R. the night before that the stepfather touched them. Petitioner stayed on the telephone with Mrs. R. and drove the seven minutes to Mrs. R.'s home. She contacted the stepfather at work and insisted he meet with her in person. He denied the allegations. She also spoke to Mr. R. about the allegations. Mr. R. recommended they resolve the matter without involving the police and seek counseling

for the children. The stepfather refused, saying he wanted to clear his name. So, petitioner contacted the police.

Petitioner also testified she believed the children were coached by Mrs. R. Petitioner's attorney also presented her request for a restraining order that she filed and for which she was awaiting a hearing. She testified she was willing to keep the stepfather away from the children and stated the children had never told her that the stepfather touched them inappropriately. She denied ever telling her mother the stepfather asked her to shave her pubic area to make herself look more like a child.

On cross-examination, minors' counsel asked petitioner whether she believed the stepfather molested the children. Petitioner acknowledged that was the allegation but stated she never saw the stepfather do anything wrong.

Following argument, the court found a prima facie showing the children were described by section 300, subdivision (d). The court further found B. and C. were physically or sexually abused by a person residing in the home and were unwilling to return home. The court found there was no reasonable means to protect the children without removing them from petitioner's physical custody. The court also found no evidence the children were coached and ordered them detained. The court set September 4, 2008, as the time for the jurisdictional hearing.

Jurisdictional/Dispositional Report on the Original Petition

Following the detention hearing, the agency social worker interviewed petitioner and reported the conversation in the jurisdictional/dispositional report. Petitioner stated she was willing to divorce stepfather in order to reunify with her children. However, she said she would return B. to Mrs. R. if the children were returned to her custody because "B. is jealous" and "There will always be problems with any man I have in my life."

Petitioner stated the stepfather did not tell Mrs. R. that B. and C. may have misinterpreted his actions as sexual abuse. She said three months prior to the children's

detention, the family caught B. masturbating. According to petitioner, the stepfather entered the children's bedrooms each night after they fell asleep to turn off their television. On one occasion, the stepfather noticed B. was lying on her side and moving back and forth. The stepfather tapped B. on the shoulder to get her to stop. Petitioner stated the stepfather never stated B. "accidentally" touched his penis. Petitioner also denied the stepfather ever put underwear on C. She remembered one occasion in which she heard the stepfather asking C. why she did not have underwear on. C. stated she could not find any clean underwear. The matter was forgotten and petitioner assumed C. found a pair of underwear to wear the next day. She later discovered that had not happened. When questioned, C. told petitioner she could not find any underwear the previous night. Petitioner also denied telling her mother, Mrs. R., that the stepfather wanted her to shave her pubic hair in order to look like a child when they had sexual relations. She said she talked to Mrs. R. once about getting a wax but it had nothing to do with the stepfather.

The social worker also confirmed with Mrs. R. that her statements were true. Mrs. R. said she did not lie to the agency and loved her daughter but wanted the best for her family. She said petitioner asked her to recant her statements so petitioner could regain custody of the children.

The agency's report also referenced the Child Abuse Response Team (CART) interviews conducted with B. and C. on August 13, 2008. B. told the CART interviewer her stepfather touched her privates on the inside and outside with his fingers. He then took her hand and made her touch his privates. He told her not to tell anyone. She knew it was her stepfather because she saw him and recognized his voice.

C. told the interviewer her stepfather entered her room on two separate occasions and touched her private parts. She described waking up and feeling her stepfather touching her on top and underneath her clothing with his hand. She was able to identify

her stepfather because of the light coming from the television in her room and she recognized his voice when he told her not to tell anyone.

In its report, the agency recommended the juvenile court deny petitioner reunification services and grant the father full physical and legal custody of the children. (§ 361.2, subd. (b)(1).).

Contested Jurisdictional/Dispositional Hearing on the Original Petition

On September 4, 2008, the juvenile court conducted the contested jurisdictional hearing. Petitioner called the social worker who testified she had no information the children ever reported to petitioner that the stepfather touched them inappropriately. Nevertheless, the social worker believed petitioner should have known the children were at risk of being sexually molested because the stepfather bathed K. and wanted petitioner to shave her pubic hair. Petitioner's attorney reminded the social worker of petitioner's testimony at the detention hearing that the stepfather showered rather than bathed K. and asked if that information changed her opinion as to whether petitioner should have known the children were at risk. The social worker testified it did not because she did not find petitioner's statement credible.

Petitioner also called Mrs. R. to testify. Mrs. R. recanted her statement about petitioner shaving her pubic hair, saying that petitioner never told her that directly: "No, no, we never--you know, talk [about] things like that."

Following Mrs. R.'s testimony, the court accepted a stipulation that petitioner filed a petition for dissolution of marriage from the stepfather on August 29, 2008, and requested a temporary restraining order (TRO) on September 2, 2008, which was denied. Copies of the TRO and petition for dissolution were entered into evidence.

Petitioner testified she changed her opinion and believed B. and C.'s allegations after reading the CART interviews. However, she denied knowing of the allegations before August 1, 2008, when the girls were removed from her custody. She further

testified she kicked the stepfather out of the house following B. and C.'s disclosure on August 1, 2008, and that the stepfather remained out of the house since.

Following argument, the court found B. and C. were sexually abused by a member of the household and that K. was at risk of sexual abuse. The court further found petitioner knew or should have known the children were in danger of abuse based on petitioner's actions, her own history of victimization, and her explaining away the incident with B. masturbating and C. not wearing underwear. The court found these incidents "red flags especially for someone who themselves has been a victim of sexual abuse."

After making its findings, the juvenile court proceeded to the dispositional phase of the hearing. Petitioner asked for reunification. No further evidence was offered. The court ordered the children removed from petitioner's custody and placed with their father. The court set a hearing for November 2008 for further disposition and ordered the social worker to conduct a home visit to determine the suitability of placement with the father and make recommendations about further disposition. The court stated it would determine whether to terminate jurisdiction or order reunification services at the November hearing. The court also ordered that its prior orders remain in effect and that visitation with petitioner remain supervised. The court specified it was not granting the agency discretion to arrange unsupervised visits between petitioner and the children.

Section 387 Petition (Supplemental Petition)

On November 10, 2008, an agency social worker received a voice message from a mandated reporter alleging father was allowing the children to have unsupervised contact with petitioner. The social worker went to petitioner's home to investigate, and while driving by, observed the stepfather standing outside petitioner's home. The stepfather entered petitioner's garage and shut the door. The social worker approached petitioner's home on foot and was met outside by petitioner who denied the children were in her

home. Petitioner also denied the social worker entrance into her home, forcing the social worker to call law enforcement for assistance. Petitioner denied the man the social worker saw was the stepfather and stated B. had recanted her allegation of sexual abuse by the stepfather. Petitioner said B. apologized for making the accusation and said it was a dream.

After approximately an hour and a half, petitioner allowed the social worker into her home. The social worker observed the children's clothing and their beds appeared to have been slept in. When the social worker stated it was obvious the stepfather and the children were living in the home, petitioner stated "They won't suffer worse than where they were."

Meanwhile, an agency case aid assisting the social worker tried to make contact with the father to determine if the children were with him. The aid made contact with an individual who wanted to remain anonymous but who stated the father allowed the children to live with petitioner. Eventually, the father contacted the aid and said he was with his girlfriend at a doctor's appointment and the children were with a paternal uncle. The social worker contacted the paternal uncle who stated the children were with his wife and he would have her call the social worker. When the social worker asked for the paternal aunt's telephone number to make the call herself, the paternal uncle stated he did not have the number. When the social worker asked him how he would call the aunt if he did not have the number, the uncle hung up the phone. Within a few minutes, the father called the aid and said the children were in his care.

Several days later, the social worker made contact with C. at school. She first denied being at petitioner's home but then admitted the stepfather took her and her sisters outside through the backyard where they jumped the fence and hid. The stepfather then took them to his apartment. She confirmed the stepfather spent the night at petitioner's house, was with them all the next day and spent the next night as well. She stated he did

not touch her during that time. She also said petitioner drove them each day to the father's house so he could take them to school. She also said her father was "tired" of her and her sister and was arguing with his girlfriend about petitioner.

The social worker interviewed B. at school. B. also first denied being alone with petitioner but then began to cry and fell weeping into the aid's arms. She admitted petitioner and stepfather were living together and said she was concerned about being sexually molested again. She said petitioner and her stepfather sat her and C. down and her stepfather said he was very sorry for what he did and promised never to do it again. She said she stayed close to her sisters when they were at petitioner's house believing that the stepfather would not touch them if they were together. B. also said her father and his girlfriend knew the stepfather was living with them but never said anything about it. "He doesn't care about us," she said.

On November 16, 2008, the agency detained B., C., and K., placed them in foster care and filed a section 387 petition alleging:

"s-1: On [August 6, 2008], the [juvenile court] ordered the children placed with their [father] under [section 361.2.] Further, the [c]ourt made a "no-contact" order regarding [the stepfather]. Subsequently, on [August 12, 2008], the [c]ourt adjudged the children, [B., C., and K.], dependents of the [juvenile court] and ordered that all prior orders remain in effect.

"s-2: The previous disposition has not been effective in the protection or rehabilitation of [B., C., and K.]. The children have primarily been residing with the mother against court orders. The [father] has allowed the children extensive unsupervised contact with the mother and perpetrator, [stepfather].

"The [father] is aware that the mother resides with [the stepfather] and has failed to protect the children from further abuse."

Detention Hearing on the Supplemental Petition

On November 17, 2008, the juvenile court conducted a detention hearing on the supplemental petition. The court ordered the children detained from their father and

ordered supervised visitation for petitioner and father. The court set the jurisdictional hearing on the supplemental petition for December 11, 2008.

On November 18, 2008, Mrs. R. contacted the social worker and explained the father began to have financial difficulty in October 2008. According to Mrs. R., petitioner saw this as an opportunity to regain custody of the children and offered to resume a friendship with him and give him money in exchange for them. The father returned the children to petitioner and lived with her for a few days. However, when petitioner refused to resume a relationship with father, he took an offer of money and a vehicle and returned to his girlfriend. What disturbed Mrs. R. was that the stepfather had moved out of petitioner's home and was not paying any attention to her until the children began living with her. Once the children were back in petitioner's custody, the stepfather moved back in with her.

On December 8, 2008, the agency filed its jurisdictional/dispositional report, recommending the court deny petitioner and father reunification services pursuant to section 361.5, subdivision (b)(6).

Jurisdictional Hearing on the Supplemental Petition

On December 11, 2008, at the jurisdictional hearing on the supplemental petition, petitioner and father appeared, waived their trial rights, and submitted on the evidence contained in the agency's report and other documents. The juvenile court found the allegations in the supplemental petition true and set a contested dispositional hearing for January 8, 2009.

Additional Case Information

In January 2009, the agency filed two additional reports for consideration at the dispositional hearing. In one, filed on January 5, 2009, the agency reported that K. disclosed to her foster mother that the stepfather sexually molested her. K. stated that when she was left alone with him, she had to sleep in a bed with him and he would touch

her buttocks. The foster mother asked her why she did not tell her mother. K. stated, "I did tell my Mommy and she told me not to tell anyone." The foster mother also stated that on or about December 14, 2008, she and the children saw the stepfather riding in petitioner's car. When they saw the foster mother, the stepfather ducked down to try and hide.

In a report filed on January 13, 2009, the agency reported petitioner was arrested for fraud. In addition, K. disclosed during a medical evaluation for a stomachache that the stepfather would insert his finger in her butt while they were taking a shower and make her touch his penis. She said that was why her butt often hurt. The doctor discovered she had a fungal infection in her rectum and vagina and treated her for it.

In the January 13 report, the agency also reported B. stated she did not want to reunify with either of her parents and was indifferent about visiting petitioner. She hoped she could be adopted by her foster mother. C. stated she was very happy in her foster home but would like to return to petitioner if her stepfather were not there. However, she did not believe petitioner would ever "get rid" of the stepfather and would lie about living with him.

Dispositional Hearing on the Supplemental Petition

The dispositional hearing was continued and conducted on January 14, 2009. Petitioner asked the court to provide her reunification services. She testified she was taking parenting classes and had been in individual therapy since September 2008. She stated she discussed the children's sexual abuse and its impact on them with the therapist.

During argument, petitioner's attorney attributed petitioner's failure to act on her children's behalf to "naivety" and a lack of understanding about the inherent risks of sexual abuse. He reminded the court it was petitioner who contacted the police upon hearing of the children's allegations over the protests of her family. It was petitioner's action, her attorney argued, that resulted in the children receiving the juvenile court's

protection. Her attorney also stated he hoped the court would consider petitioner's voluntary participation in services and love and devotion to her children when deciding whether reunification would serve their best interests.

Following argument, the court stated:

"This is not, in the [c]ourt's mind, an issue of omission by the parents, rather while neither parent is the actual perpetrator of the sexual abuses, it's the parents actions, not omissions, which again place these children at [risk of] suffering severe sexual abuse at the hands of the [stepfather].

"[Petitioner], knowing about the previous abuse allegations, knowing about the children's fear, not only subjects the children to further abuse by [stepfather], she takes affirmative steps to deceive everyone about what is going on. [Petitioner] has the children lie about what is going on. [Petitioner] has proved to the [c]ourt that she is not credible. She has proved to the [c]ourt she will place her interest before the interests and safety and welfare of her children. [¶] ... [¶] The [c]ourt finds that [361.5, subdivision (b)(6)] is applicable to both parents.

"The [c]ourt is making a factual finding that the children will not benefit from reunification services with either parent whom the [c]ourt finds to be offending parents by their actions of placing the children in the hands of [the stepfather], the acts comprising the sexual abuse, and the circumstances under which that abuse is inflicted are set forth in the [original petition], which the [c]ourt originally found true"

The court further found the children would not benefit from reunification services with either parent and that reunification would not serve the children's best interest. The court set the section 366.26 hearing for May 2009.

DISCUSSION

A. Section 361.5, subdivision (b)(6)

Petitioner challenges the sufficiency of the evidence to support a denial of reunification services under section 361.5, subdivision (b)(6) (subdivision (b)(6)) which provides:

“(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, ... [¶] ... [¶] (6) [t]hat the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian.”

Thus subdivision (b)(6) targets two types of abuse: severe sexual abuse and severe physical harm. In this case, the juvenile court denied petitioner reunification services, having found her children were severely sexually abused.

Severe sexual abuse, as defined in subdivision (b)(6), “may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half sibling of the child, or between the child or a sibling or half sibling of the child and another person or animal with the actual or implied consent of the parent ... ; or *the penetration or manipulation of the child’s, sibling’s, or half sibling’s genital organs or rectum by any animate or inanimate object for the sexual gratification of the parent . . . , or for the sexual gratification of another person with the actual or implied consent of the parent . . .*” (Italics added.)

If the juvenile court finds subdivision (b)(6) applies, it must read into the record the basis for a finding of severe sexual abuse and specify the factual findings used to determine the provision of reunification services to the offending parent would not benefit the child. (§ 361.5, subd. (i).)

Petitioner does not argue the juvenile court erred in finding that providing her reunification services would not benefit her children. Nor does she argue the children were not severely sexually abused as defined under subdivision (b)(6). Rather, she argues, the court’s stated reasons do not support a determination the children were severely sexually abused. Alternatively, she argues, the court erred because there is

insufficient evidence to support the second required finding under subdivision (b)(6); i.e. she impliedly consented to severe sexual abuse.²

We review the juvenile court's order denying reunification services for substantial evidence. (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 839.) In so doing, we examine the record in the light most favorable to the juvenile court's findings and conclusions, defer to the juvenile court on issues of credibility, resolve all conflicts in the evidence in support of the juvenile court's findings, and draw all legitimate inferences to uphold the juvenile court's order. (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216.) Having reviewed the appellate record, we conclude substantial evidence supports the juvenile court's order denying petitioner reunification services.

B. The juvenile court read into the record the factual basis for its finding B. and C. were severely sexually abused.

In denying petitioner reunification services under subdivision (b)(6), the juvenile court stated: “[T]he acts comprising the sexual abuse, and the circumstances under which that abuse is inflicted are set forth in the [original petition], which the [c]ourt originally found true” In so stating, the court articulated its finding of severe sexual abuse by incorporating by reference its findings as set forth in the original petition. Those findings were that stepfather fondled B. and C.’s genital area underneath their clothing. Such conduct would constitute “*manipulation of the child’s . . . genital organs . . . by any animate . . . object for the sexual gratification . . . of another person . . .*” under

² Petitioner also argues there is insufficient evidence she committed or consented to severe physical abuse under subdivision (b)(6). While there was some testimony at the detention hearing on the original petition about the stepfather’s methods of disciplining the children, the juvenile court denied petitioner reunification services based on the “severe sexual abuse” not the “severe physical abuse” provision of subdivision (b)(6). Consequently, we need not address whether petitioner committed or consented to severe physical abuse of her children.

subdivision (b)(6). Consequently, petitioner's claim the juvenile court failed to make a record of its factual finding of severe sexual abuse is meritless. Further, even if the court had not articulated its factual findings, we could have inferred them from the evidence on the appellate record. (*In re S.G.* (2003) 112 Cal.App.4th 1254, 1260 [required findings supported by substantial evidence can be inferred].)

C. Substantial evidence supports the juvenile court's finding petitioner impliedly consented to the severe sexual abuse of B. and C.

Petitioner argues there is no evidence she impliedly consented to B. and C.'s abuse. Implied consent, she argues without persuasive legal authority, requires reckless conduct. Her reasoning is as follows. The juvenile court found under section 300, subdivision (d) she reasonably should have known the children were in danger of sexual abuse. However, she claims, the phrase "reasonably should have known" denotes a negligence standard. For that proposition, petitioner cites *Tyrone W. v. Superior Court* (2007) 151 Cal.App.4th 839 (*Tyrone W.*), a case involving denial of reunification services under the "severe physical harm" provision of subdivision (b)(6). The court in *Tyrone W.* held subdivision (b)(6) does not apply to a parent who reasonably should have known of the abuse because the parent was not complicit in the infliction of the physical harm by act, omission or consent. (*Id.* at p. 851.) Therefore, under the authority of *Tyrone W.*, petitioner argues, the juvenile court's finding she "reasonably should have known" the stepfather was sexually abusing B. and C., at best, makes her negligent but does not support a finding she impliedly consented to the sexual abuse of B. and C.

Petitioner finds further support for this latter assertion in *Amber K. v. Superior Court* (2006) 146 Cal.App.4th 553 (*Amber K.*), a case which directly addresses the "severe sexual abuse" provision of subdivision (b)(6). (*Amber K.*, *supra*, 146 Cal.App.4th at p. 561.) *Amber K.* arose on a writ petition from the juvenile court's order denying a mother reunification services under subdivision (b)(6) because she allowed her

children's father to stay in the home unsupervised with the children knowing he had previously sexually molested one of the children. (*Id.* at pp. 555, 561.) As a result, one of the children was sexually abused. (*Id.* at p. 559.) The appellate court denied the petition, concluding the mother impliedly consented to the sexual abuse by allowing the father to stay overnight at the house despite knowing he had previously sexually abused one of the other children multiple times. (*Id.* at p. 561.) From that, petitioner asserts, that a finding of "implied consent" under *Amber K.* requires "(1) actual knowledge of the risk and its potential effects, followed by (2) knowing and intentional exposure to the risk." Those elements, she claims, constitute recklessness, which does not describe her conduct vis-à-vis the risk to B. and C. before they were removed in August 2008.

Further, petitioner argues, even if her re-exposure of the children to their stepfather after the allegations of sexual abuse were disclosed amounts to recklessness, there is no evidence her conduct resulted in further instances of sexual abuse. Consequently, she contends, she is not a parent described under subdivision (b)(6).

Petitioner's argument fails for several reasons. First, the juvenile court not only found petitioner "reasonably should have known" the children were at risk of sexual abuse, it also found petitioner "knew" the children were at risk. The court made its finding after reading reports of petitioner and the stepfather's denial of the sexual abuse and their inconsistent stories about the stepfather's contact with the children. The court also heard petitioner's testimony and did not find her credible. Further, the court's finding petitioner "knew" of the sexual abuse was appealable from its dispositional order issued on September 4, 2008, from which petitioner did not seek appellate review. Having failed to challenge it on appeal, it is now final and binding. (*Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 811-812.) The result is that there is substantial evidence on this record to support a finding B. and C. were severely sexually abused and a non-reviewable finding petitioner knowingly exposed them to it. That alone supports

the juvenile court's order denying petitioner reunification services under subdivision (b)(6).

But, even assuming, the juvenile court only found petitioner "reasonably should have known" the stepfather was sexually abusing B. and C., there was clear and convincing evidence by the dispositional hearing on the supplemental petition that petitioner knew the children were being abused while it was occurring. Petitioner had demonstrated herself to be a master deceiver, willing to lie, manipulate and violate the law to continue her relationship with the stepfather and have custody of her children. She manipulated the children's father to bring the children home knowing the stepfather would have access to them and she would be in violation of the court's no-contact and visitation orders. She also manipulated B. into recanting her allegation of the sexual abuse even though the stepfather admitted sexually abusing B. and C. Petitioner also took great pains to hide the fact she had custody of the children from the agency. Further, though the timing of K.'s sexual abuse was never pinpointed, petitioner testified the stepfather often bathed her while she was present. There is no reason to believe that practice did not continue after the children were removed and re-exposed to the stepfather. Further, given petitioner's propensity for lying, there is no reason to believe it did not occur before the children were removed in August 2008. If that is the case, then there is even stronger evidence petitioner knowingly exposed the children to the stepfather's sexual abuse because K. said she told petitioner the stepfather was sexually abusing her. In our view, given the state of the evidence, there is substantial evidence petitioner impliedly consented to the sexual abuse of her children. Consequently, we will deny her petition but not before we add a final comment about the necessity of filing a section 342 petition, especially in a case such as this.

D. Section 342 Petition

Where, as in this case, the juvenile court has assumed dependency jurisdiction pursuant to an original petition and new facts or circumstances subsequently arise which are sufficient to state that the child is a minor under section 300, the agency must file a subsequent petition under section 342. In this case, subsequent to the juvenile court's assumption of jurisdiction on the original petition, K. revealed that the stepfather sexually molested her. The sexual molestation she described, if true, was even more severe than that suffered by B. and C. because it involved penetration. In addition, unlike B. and C., K. claimed she told petitioner of the abuse. Those allegations warranted inclusion in a section 342 petition and if found true would have provided an even stronger case for denying reunification services under subdivision (b)(6).

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.